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CELLSPIN SOFT INC.

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

CELLSPIN SOFT, INC., Plaintiff, v. GOPRO INC., Defendants.	Case No. 3:17-cv-05939 **COMPLAINT FOR INFRINGEMENT OF U.S. PATENT NO. 9,258,698** **DEMAND FOR JURY TRIAL** Complaint Filed: October 16, 2017

NATURE OF THE ACTION

1. This is a patent infringement action to stop Defendant's infringement of United States Patent No. 9,258,698 entitled "Automatic Multimedia Upload for Publishing Data and Multimedia Content" (the "'698 patent" or "Patent-in-Suit").

THE PARTIES

2. Plaintiff, Cellspin Soft, Inc. ("Cellspin"), is a California corporation with an office and place business at 1410 Mercy Street, Mountain View, California 94041.

3. Upon information and belief, Defendant, GoPro, Inc. ("GoPro"), is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 3000 Clearview Way, San Mateo, California 94402. GoPro, Inc. can be served with process through its registered agent The Corporation Service Company at 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

JURISDICTION AND VENUE

4. This action arises under the patent laws of the United States, 35 U.S.C. § 1 et seq.,

including 35 U.S.C. §§ 271, 281, 283, and 284. This Court has subject matter jurisdiction over this case for patent infringement, including pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Plaintiff is the assignee of the Patent-in-Suit with all right, title and interest to bring the claims herein comprising those for past and present infringement, including to recover damages therefor.

6. The Court has personal jurisdiction over GoPro, including because GoPro has minimum contacts within the State of California; GoPro has purposefully availed itself of the privileges of conducting business in the State of California; GoPro regularly conducts business within the State of California; and Plaintiff's cause of action arises directly from GoPro's business contacts and other activities in the State of California, including at least by virtue of GoPro's infringing methods and products, which are at least practiced, made, used, offered for sale, and sold in the State of California. GoPro is subject to this Court's specific and general personal jurisdiction, pursuant to due process and the California Long Arm Statute, due at least to its continuous and systematic business contacts in California, including related to operations conducted from its San Mateo, California headquarters and the infringements alleged herein. Further, on information and belief, GoPro is subject to the Court's specific jurisdiction, including because GoPro has committed patent infringement in the State of California, including as detailed herein. In addition, GoPro induces infringement of the Patent-in-Suit by customers and/or infringing users located in California. Further, on information and belief, GoPro regularly conducts and/or solicits business, engages in other persistent courses of conduct, and/or derives substantial revenue from goods and services provided to persons and/or entities in California.

7. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400(b), including because GoPro has at least one regular and established place of business in this District and in California, including its San Mateo, California headquarters, and at least some of its infringement of the Patent-in-Suit occurs in this District and in California.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 9,258,698

8. Plaintiff refers to and incorporates herein the allegations in the above paragraphs.

9. U.S. Patent No. 9,258,698 was duly and legally issued by the USPTO on February 9, 2016 after full and fair examination. *See* Exhibit A.

10. Claims of the '698 Patent comprise, generally, methods, devices, systems, and computer-readable media comprising digital camera devices having a short-range wireless capability to connect with a cellular phone; acquiring new-media after establishing a secure wireless connection between the camera and the cellular phone; creating a new-media file using the new-media; receiving a data transfer request for the new-media file initiated by a mobile software application on the cellular phone over the wireless connection after storing the created new-media file in memory of the camera; and transferring the new-media file to be stored on the cellular phone, over the wireless connection, wherein the cellular phone is configured to use HTTP to upload the received new-media file along with user information to a user media publishing website.

11. GoPro has infringed, and is now infringing, the '698 patent, including at least claims 1, 3, 4, 5, 7, 8, 10, 11, 12, 13, 15, 16, 17, 18, 19, and 20, in this judicial district, the State of California, and elsewhere, in violation of 35 U.S.C. § 271 through actions comprising the making, using, offering for sale, and/or selling, without authority from Plaintiff, devices, systems, and/or computer-readable media for enabling connection between data capture devices and other wireless devices, such as a cellular phone, acquiring new data on the data capture device, and transferring the data from GoPro data capture devices to web servers via wireless mobile devices. On information and belief, GoPro practices, and/or induces others to practice, the claimed methods, and/or makes, uses, offers for sale, and/or sells, and/or induces others to use, the claimed devices, systems, and computer-readable media, including camera and other media devices, including DSLR cameras, point-and-click cameras, digital cameras, and other digital media devices, designed to capture digital media, *e.g.*, images, photographs, audio, video, etc., including related data such as GPS coordinates, timestamp, etc., as specified herein, comprising wireless functionality, with such products comprising the Hero 3 (including at least the Black, Silver, and White versions thereof), Hero 3+ (including at least the Black and Silver versions thereof), The Hero, Hero 4 (including at least the Black and Silver versions

thereof), Hero4 Session, Hero+LCD, Hero+, Hero5 Session, Hero5 Black, Hero6 Black, Hero2 w/ Wi-fi Combo Kit, and HD Hero (2nd gen) w/ Wi-fi Combo Kit, including when used in conjunction with GoPro mobile applications (including iOS and Android versions thereof) comprising GoPro Mobile (formerly known as Capture), Quick, and/or Passenger, including when used in conjunction with websites comprising media publishing sites, such as social media websites.

12. Without limitation, the accused GoPro devices, including software which practices said methods, support wireless protocols, including short-range wireless protocols, including wireless networking or Bluetooth protocols, comprising transferring data from digital camera devices to websites via applications on cellular phones, including via its cameras and other media devices. The accused GoPro devices, systems, computer-readable media, and methods comprise the capability to establish a secure wireless connection with a cellular phone. Once the connection between the GoPro device and the cellular phone is established, the GoPro devices acquire new-media (*e.g.*, photos, audio, and/or videos, and related data), create a new-media file using the acquired new-media, and transfer the new-media file to the cellular phone in response to receiving a data transfer request for the new-media file initiated by the GoPro application on the cellular phone, over the established wireless connection, after storing the created new-media file in the memory of the GoPro device. The GoPro devices transfer the new-media file to the cellular phone so that it is stored, over the established wireless connection, wherein the cellular phone is configured to use HTTP to upload the received new-media file, along with the user's account information, to a media publishing website for the user, including social media, news, database, or other websites. In addition, and in the alternative, to GoPro's making, offering for sale, and/or selling of the GoPro devices and applications, upon information and belief, at least through GoPro's hardware, software, and efforts to test, demonstrate, and otherwise use GoPro devices, GoPro has used the claimed devices, systems, and computer-readable media via at least the use of the GoPro devices, comprising at least the foregoing steps.

13. GoPro has had notice of its infringement of the '698 patent pursuant to notifications

from Plaintiff comprising letters mailed on June 15, 2017 and August 31, 2017.

14. Additionally, or in the alternative, GoPro has induced, and continues to induce, infringement of the ‘698 Patent in this judicial district, the State of California, and elsewhere, by intentionally inducing direct infringement of the ‘698 Patent, including by knowingly and actively aiding or abetting infringement by users, by and through at least instructing and encouraging the use of the GoPro products and software noted above. Such aiding and abetting comprises providing devices, software, websites, and/or instructions regarding the use and/or operation of the GoPro devices and applications in an infringing manner, and further including providing the accused GoPro devices and applications to users who, in turn, use the claimed devices, systems, and computer-readable media, including as noted above. Further, the direct infringement of the claimed methods by users that occurs in connection with GoPro’s applications and/or websites occurs under the direction or control of GoPro, including GoPro software and hardware, including because user devices perform said steps in order to receive the benefits of GoPro’s mobile application, and/or because GoPro conditions use of its mobile applications upon performance of the remaining method steps. Further, the direct infringement by users of the claimed systems provides the user with a direct benefit from the use of GoPro devices and applications. Such induced infringement has occurred since GoPro became aware of the ‘698 Patent, at a minimum, as noted above, and the knowledge and awareness that such actions and use by users comprise infringement of the ‘698.

15. To the extent GoPro continues, and has continued, its infringing activities noted above in an infringing manner post-notice of the ‘698 patent, such infringement is necessarily willful and deliberate. Plaintiff believes and contends that GoPro’s continuance of its clear and inexcusable infringement of the ‘698 patent post notice is willful, wanton, malicious, bad-faith, deliberate, and/or consciously wrongful.

16. Including on account of the foregoing, Plaintiff contends such activities by GoPro qualify this as an egregious case of misconduct beyond typical infringement, entitling Plaintiff to enhanced damages. Including based on the foregoing, Plaintiff requests an award enhanced damages, including treble damages, pursuant to 35 U.S.C. § 284.

17. Each of GoPro's aforesaid activities have been without authority and/or license from Plaintiff.

DAMAGES

18. By way of its infringing activities, GoPro has caused, and continues to cause, Plaintiff to suffer damages, and Plaintiff is entitled to recover from GoPro the damages sustained by Plaintiff as a result of GoPro's wrongful acts in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

19. GoPro's infringement of Plaintiff's rights under the Patent-in-Suit will continue to damage Plaintiff, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

20. Plaintiff also requests that the Court make a finding that this is an exceptional case entitling Plaintiff to recover their attorneys' fees and costs pursuant to 35 U.S.C. § 285.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff hereby respectfully requests that this Court enter judgment in favor of Plaintiff and against GoPro, and that the Court grant Plaintiff the following relief:

A. An adjudication that one or more claims of the Patent-in-Suit has been directly and/or indirectly infringed by GoPro;

B. An award to Plaintiff of damages adequate to compensate Plaintiff for GoPro's past infringement, together with pre-judgment and post-judgment interest, and any continuing or future infringement through the date such judgment is entered, including interest, costs, expenses, and an accounting of all infringing acts including, but not limited to, those acts not presented at trial;

C. A grant of preliminary and permanent injunction pursuant to 35 U.S.C. § 283, enjoining GoPro and all persons, including its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert or participation therewith, from making, using, offering to sell, or selling in the United States or importing into the United States any methods, systems, or computer readable media that directly or indirectly infringe any claim of the Patent-in-Suit, or any methods, systems, or computer readable media that are colorably different;

D. That this Court declare that GoPro's infringement has been, and continues to be, willful, including that GoPro acted to infringe the Patent-in-Suit despite an objectively high likelihood that its actions constituted infringement of a valid patent and, accordingly, award enhanced damages, including treble damages, pursuant to 35 U.S.C. § 284;

E. That this Court declare this to be an exceptional case and award Plaintiff reasonable attorneys' fees and costs in accordance with 35 U.S.C. § 285; and

F. A judgment and order requiring GoPro to pay Plaintiff their damages, costs, expenses, fees, and prejudgment and post-judgment interest for GoPro's infringement of the Patent-in-Suit as provided under 35 U.S.C. §§ 284 and/or 285; and

G. Any and all further relief for which Plaintiff may show itself justly entitled that this Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby respectfully requests a trial by jury of any issues so triable by right.

Dated: October 16, 2017

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By: */s/ John J. Edmonds*
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